

# JUNE 2004 BROWNFIELDS WORKING SESSION REPORT

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BROWNFIELD REVITALIZATION PROGRAM MANAGER

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## ***I. Introduction***

The Department of Environmental Quality's (DEQ) Brownfield and Environmental Site Response Program (Program) develops and modifies authorities, policies and other tools to facilitate the redevelopment and reuse of "brownfield properties" - those properties where reuse is hindered by actual or perceived environmental contamination.

On June 1, 2004, public and private sector participants shared with the Program ideas on how to best facilitate the reuse of these properties. This Working Session was conducted under an informal format, with certain participants presenting information on specific topics and all participants invited to comment at any time.

The Program will continue to seek Working Group and public input as it works to implement the recommendations presented in this document. The Program welcomes public input and comment related to this document and Program actions described herein.

### ***A. Participants***

The Program expressly thanks all participants for generously providing the time necessary to prepare for and participate in the Working Session. Working Session participants included:

#### **PRIVATE SECTOR:**

1. David Wali – Colliers International, Broker
2. Harry Green – Harry Green & Assoc. (via teleconference)
3. Gary Allen – Land Use and Environmental Attorney, Givens Pursley
4. Wayne Lambert -- Kleinfelder
5. Paula Lyon – Kleinfelder
6. Dean Fredrickson -- GeoEngineers , Inc.

#### **PUBLIC SECTOR:**

##### **Federal:**

7. Mark Maserik – EPA
8. Bill Jarocki – Environmental Finance Center
9. Rick Tremblay – Economic Development Agency

##### **State:**

10. Joe Nagel -- Department of Environmental Quality
11. Aaron Scheff – Department of Environmental Quality
12. Keith Donahue – Department of Environmental Quality
13. Cliff Long – Department of Commerce

14. Wendi Dunham – Department of Commerce

**Regional (Economic Development Districts):**

15. Colleen Herring - RIVDA

16. Kathy Vilker - RIVDA

17. Susan Lorenz – SEICOG

18. Kathleen Simko and Pat Engel -- SAGE

19. Chris Kuykendall -- CEDA

20. Wanda Keefer – CEDA

**Local:**

21. Jay Townsend – City of Salmon

22. Gary Van Huffel – City of Salmon

23. Rick Wells – City of Caldwell

24. Wendy Kirkpatrick – City of Meridian

25. Dave McAlindin – City of Twin Falls

***B. Three Central Topics of Discussion***

The Working Session covered three general areas:

- (1) How can the Program help address the unique challenges private developers and local governments face when redeveloping environmental sites?
- (2) Should DEQ, together with Economic Development Districts (or others) apply to EPA for funds to establish and capitalize a “Brownfield Cleanup Revolving Loan Fund”?
- (3) How can the Program best coordinate and leverage government programs with funds for use at brownfield sites?

## ***II. How Can DEQ's Brownfields Program Help Address the Unique Challenges Private Developers and Local Governments Face When (Re)Developing Environmental Sites?***

### ***A. Discussion Summary***

**PRIVATE SECTOR PRESENTERS:** Prior to this meeting, the following questions were posed to individuals within the private sector:

- ◆ WHAT ATTRACTS PRIVATE DEVELOPMENT TO AN ENVIRONMENTAL SITE?
- ◆ WHAT ARE THE UNIQUE CHALLENGES PRESENTED BY AN ENVIRONMENTAL SITE?
- ◆ HOW CAN DEQ HELP ADDRESS THOSE UNIQUE CHALLENGES?

#### **◆ Harry Green**

##### **The Point at Post Falls LLC and Harry Green and Associates**

Mr. Green participated via teleconference and provided two written handouts.

In 2001, Mr. Green's company bought the 33-acre former Louisiana-Pacific Corp. mill site in Post Falls and developed 33-acre site into a mixed-use project (The Point at Post Falls). The Point at Post Falls includes housing, retail and commercial space, but he declined to give any additional information.

Mr. Green indicated a very positive experience working with DEQ to address environmental issues related to the site's historic use. Mr. Green emphasized the importance of the following points:

- Engage DEQ early and often when approaching an 'environmental site';
- Have a local DEQ contact and project manager that reaches beyond the traditional DEQ role by coordinating with other state and local agencies; and
- Increase flexibility in grant and regulatory time frames to keep a project economically viable.

#### **◆ David Wali**

##### **Colliers International**

Mr. Wali shared his general experiences and his specific experience as a broker in the 8<sup>th</sup> Street Market Place project in downtown Boise. The 8<sup>th</sup> Street redevelopment project is a large-scale project in Boise's downtown area. Unanticipated remediation costs were encountered in this project, despite the buyer having conducted its due diligence in advance of purchase.

As a broker, Mr. Wali often cannot engage current owners because they are fearful an assessment will determine cleanup costs exceed the property value. These current owners will leave the property sitting idle, or attempt to force developers to purchase the property before conducting on site assessment activities. The potential redevelopment stalls out at this point. Suggestions on how to remedy this issue include:

- Educate current owners that all potential purchasers will require an assessment before purchasing, or else price the property as if highly contaminated;
- Educate current owners that cleanups often become more expensive over time as contamination spreads;
- Educate current owners about risk-based cleanups and use of institutional controls – the general feeling is that all levels of all contamination results in a hugely expensive cleanup;
- Develop a means to conduct “blind assessments” – testing a site with some form of guaranteed liability protection for the current owner;
- Develop any other tool to protect a current owner from unlimited liability related to contamination discovered when a potential purchaser is performing their due diligence;
- Private insurance is cost prohibitive following 9/11; “state insurance” that covers excess cleanup costs above anticipated cleanup cost (after assessments are complete) would help share/spread the risk developers encounter when taking on environmental sites; and
- Timing and certainty are two important factors developers would like to see from DEQ (and other regulatory agencies).

◆ **Gary Allen**  
**Law Firm of Givens Pursley LLP**

Mr. Allen is a partner with Givens Pursley; his practice areas include both Environmental and Land Use law. Accordingly, Mr. Allen is familiar both with private sector development and with DEQ’s (and EPA’s) approach toward liabilities related to assessment and cleanup of contaminated properties.

Mr. Allen pointed out that, while local governments may “take on” a brownfield site for civic reasons, we can only expect the private sector to get involved with

the rare “must have” site (due to location, etc). This is particularly true in Idaho given the lack of land use management authorities in the state (i.e. growth boundaries). Absent such a driving economic factor, the risks are too great given the availability of clean “green space” in most Idaho towns and cities. Accordingly, DEQ would need to develop substantial incentives to attract private development on brownfields. Any/all liability protections offered by DEQ’s Brownfield Program must also protect the developer/owner from liability under all DEQ and EPA programs/authorities (CERCLA, RCRA, LUST/Groundwater/etc.).

Mr. Allen proposed the following ideas to address the above issues:

- Flexibility within DEQ to create and implement a site-by-site approach unique to each site when determining how to address liability/cleanup etc. when a developer knowingly chooses to take on a brownfield project. A one-size fits all approach won’t work;
- A statutory scheme setting up a “Brownfield/Redevelopment Agency” in Idaho focused on redevelopment of brownfield properties (more specialized than economic development in general). Developers will be more comfortable dealing with such an agency rather than DEQ (a regulatory agency). Also, DEQ is not set up to look at sites as development projects; instead, they look at them as “cleanups,” without considering the development side of things. This Agency would work directly with developers, understand the economics of real estate transactions, and have ‘redevelopment agency-type’ authorities, i.e. condemnation, grant-writing/management type capacity, TIF, etc;
- Providing potential purchasers a cap on environmental liability is a key element to attracting developers: perhaps via a state insurance pool sharing risk for seller and developer, or possibly an up-front ‘letter of assurance’ from DEQ providing a cap on liability for seller and purchaser tied to land use and an acceptable risk-based cleanup level; and
- An ‘amnesty window’ for brownfield sites. Pulling due diligence costs to the back end of the project.

**PUBLIC SECTOR PRESENTERS:** Participants from the public sector were asked to address the following issues:

- ◆ HOW DO LOCAL GOVERNMENTS APPROACH ECONOMIC DEVELOPMENT AT ENVIRONMENTAL SITES?
- ◆ WHAT ARE THE UNIQUE CHALLENGES PRESENTED BY AN ENVIRONMENTAL SITE?
- ◆ HOW CAN DEQ HELP ADDRESS THOSE “UNIQUE CHALLENGES”?

◆ **Dave McAlindin**  
**City of Twin Falls**  
**Twin Falls Urban Renewal**

Dave presented information related to the City's efforts to revitalize an urban brownfield area. The area consists of a number of properties located between Twin Falls' historic urban center and Rock Creek, a natural asset located just south of downtown. Between Rock Creek and downtown are a number of railroad tracks and under-utilized warehouse and industrial buildings. Both the City and Urban Renewal have purchased properties in the area, and are looking to purchase additional properties. The long term goal is to revitalize this area, tying Rock Creek and downtown together.

This is a situation where City leaders are driven to redevelop this area for civic reasons, working toward the long term health of Twin Falls via preservation of its historic downtown area and by highlighting the natural resource of Rock Creek. They do not use a 'condemnation' route for political reasons.

Because of potential liability concerns, certain property owners in the area are unwilling to grant the City access to their properties to conduct assessments. The City is also challenged with securing funding to conduct needed assessments on properties it already owns (not to mention cleanup funding). Assistance from DEQ with understanding and addressing environmental issues related to this large scale, long-term project is needed and appreciated.

◆ **Jay Townsend**  
**Gary Van Huffel**  
**City of Salmon**

Jay and Gary shared information related to Salmon's "Town Square Park" project. Salmon's Urban Renewal Agency (SURA) competed successfully for approximately \$100,000 in EPA brownfield cleanup funds to clean up petroleum contamination on a property located within the planned Park. This project represents the first federal Brownfield Cleanup Grant awarded in Idaho. They explained that SURA undertook a jurisdiction-wide review of sites and prioritized sites within their district. With this project, SURA is revitalizing a petroleum-contaminated industrial area into open green space in the center of the City along the Salmon River. They also chose not to make use of 'condemnation' avenue.

Jay and Gary expressed the need to work with Assessor's Offices throughout the state (and any other appropriate agency) to ensure sites with known contamination are re-assessed to accurately reflect a current "with contamination" value. Absent this reassessment, current owners do not have a



reasonable perception of the value (or lack of value) of their property, making a purchase and the ensuing redevelopment very difficult.

◆ **Aaron Scheff**  
**DEQ, Southwest Idaho Brownfields Specialist**

Aaron shared his experiences working to help local governments revitalize brownfield sites. A typical problem Aaron encounters is current owners refusing to grant access to properties for assessment purposes. The perception among these owners is that their property is not devalued to acknowledge contamination unless/until an assessment is performed finding the contamination. Aaron supports a DEQ educational effort to help property owners better understand the value (or lack of value) of contaminated properties or properties in need of an assessment. In addition, DEQ needs to better educate all involved that many sites, even when contamination is discovered, do not require “active remediation” (i.e. digging out and removing soils) and do not become ‘Superfund’ sites. In contrast, many sites are addressed using a risk-based approach, ongoing monitoring and institutional controls, at relatively little cost to the owner.

**CONSULTANT PRESENTERS:** Environmental consultants were asked to discuss the following questions:

- ◆ FOR ENVIRONMENTAL CONSULTANTS, WHAT ARE THE UNIQUE CHALLENGES ASSOCIATED WITH WORKING ON A REDEVELOPMENT PROJECT VERSUS OTHER SITES?
- ◆ HOW CAN DEQ HELP ADDRESS THOSE UNIQUE CHALLENGES?

◆ **Paula Lyon, Environmental Consultant**  
**Wayne Lambert, Brownfields Redevelopment Specialist**  
**Kleinfelder**

Paula and Wayne emphasized the importance of having a local DEQ contact to work with early and often. The DEQ contact needs to become vested in the success of the overall project, not just the assessment/cleanup portion of the reuse project. DEQ needs to be flexible/creative to accommodate timing issues involved in these projects. DEQ needs to act such that developers gain confidence in DEQ’s interest in seeing the project succeed. DEQ needs to work with developers/consultants to find environmental solutions that meet the intended end use (just as developer/consultant needs to be flexible with end use based on environmental issues). Increased inter-agency cooperation and sharing of information (timing on permitting) is of central importance. To summarize key points:

- Brownfields Redevelopment Specialist needs to be open (honest);
- Early participation and communication from all stakeholders is vital to the success of a brownfields redevelopment project;

- Stakeholders should communicate their needs and wishes for the project; where they can be flexible and where they can/will not;
- A brownfields project must begin with a clear understanding of the end goals of the redevelopment to devise an agreeable strategy on how to achieve those objectives;
- Flexibility on the end goal of the redevelopment, and creativity in how to achieve an acceptable end use, both during the redevelopment planning and the process can make the difference between a successful project and failure;
- Cleanup criteria and goals should be end use – risk based. This would allow greater flexibility on what is an achievable reuse of a brownfields (a park vs. a parking lot);
- Stakeholders need to know a realistic schedule for each step/task in achieving the project goals. However, they also need to be realistic in accepting that unknown and unexpected events and findings can occur. Therefore, flexibility and contingencies should be considered early and throughout the project; and
- Affordable insurance would alleviate some of the “unique” risks associated with redevelopment of brownfields.

## **B. Group Suggestions**

- Make use of existing EDDs, rather than developing another entity. Tie brownfields into existing municipal leasing programs and ‘smart growth’ initiatives;
- When a municipality takes the lead on one of these projects for the good of the community, they should be shielded from EPA/DEQ liabilities;
- Establishment of “Brownfield Redevelopment Districts” where persons reusing identified properties in the jurisdiction could take advantage of incentives unique to these districts;
- Develop a state environmental insurance program with public benefit and health as the stated goal, rather than a traditional ‘insurance company’ mindset;
- DEQ lien or super lien authority to recover funds DEQ spends assessing or cleaning a site;

- DEQ TIF authority to cover gap between floating bond and revenue stream; and
- Manual for private sector on tools for addressing a brownfield/environmental site;

### **C. *Program Actions***

- ◆ Risk-Based Cleanup Approach: The Program is considering each of the above suggestions. The Program developed and made available a “Risk Evaluation Manual” (REM) detailing how DEQ will meet its mandate to consider site specific factors and human health risks when developing cleanup standards. Use of the REM decreases cleanup costs and increases use of institutional controls, thereby facilitating cleanup and reuse.
- ◆ Improve Voluntary Cleanup Program: The Program is reviewing the Land Remediation Act, DEQ’s voluntary cleanup program, to determine if/where to modify the Act to increase incentives encouraging participation in the program. These incentives include increased tax relief, increased liability protections, streamlining the cleanup process by minimizing DEQ oversight, and/or building in an insurance mechanism to pool risks.
- ◆ Insurance: The Program is reviewing state insurance mechanisms in other states and will provide information regarding feasible insurance options designed to offset unknown risks when purchasing and renewing brownfield properties.
- ◆ Increased Regulatory Flexibility / Regulatory Streamlining: The Program is reviewing programs in New Jersey (“Cleanup Star Program”) and Massachusetts (“Hazardous Waste Site Cleanup Professionals”). These programs allow pre-qualified environmental professionals to investigate and remediate certain properties with limited regulatory oversight subject to possible audit. The Program will compile this information and work with interested parties to determine the utility of developing a similar program for Idaho.
- ◆ Educational Efforts. The Program launched a “Brownfield Revitalization” web page detailing various funding opportunities. The Brownfield page also contains detailed information on DEQ’s Voluntary Cleanup Program. The page also contains information on upcoming brownfields-related events. The Program will continue to present information to public and private sector entities upon request and will conduct its annual Brownfields Conference. The Program is currently developing an educational brochure for wide distribution throughout the state.

- ◆ The Program is reviewing and compiling data on lien and super-lien authorities of other states. The Program will share this information with interested parties and make a determination with those parties as to whether such a statute would benefit efforts to renew Idaho's Brownfields.

### ***III. How Can DEQ Best Work With Idaho's Economic Development Districts (or Others) to Establish a "Brownfield Cleanup Revolving Loan Fund"?***

#### ***A. Discussion Summary***

EPA and DEQ (Keith Donahue and Mark Masarik) provided background information on the structure of EPA's Brownfield Cleanup Revolving Loan Fund (BCRLF), as follows:

The Brownfield Cleanup Revolving Loan Fund (BCRLF) grants provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites.

- ◆ An eligible entity may apply for up to \$1,000,000 for an initial BCRLF grant.
- ◆ Proposals may be submitted by "coalitions," or groups of eligible entities, to pool their revolving loan capitalization grant funds. A coalition is a group of two or more eligible entities that submits one grant application under the name of one of the coalition participants. The grant recipient must administer the grant, be accountable to EPA for proper expenditure of the funds, and be the point of contact for the other coalition members. Members of the coalition other than the grant recipient must submit letters agreeing to be part of the coalition.
- ◆ Coalitions of eligible entities may apply together under one recipient for up to \$1,000,000 per eligible entity. These funds may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).
- ◆ A BCRLF grant recipient must use at least 60 percent of the awarded funds to capitalize and implement a revolving loan fund. Revolving loan funds generally are used to provide no-interest or low-interest loans for brownfields cleanups. An applicant may loan RLF grant funds to itself. An RLF grant recipient also may use its funds to award subgrants to other eligible entities, including nonprofit organizations, for brownfields cleanups on sites owned by the subgrantee; however, an RLF grant recipient may use no more than 40 percent of the awarded funds for cleanup subgrants and may not subgrant to itself. An RLF grant recipient may not make a cleanup subgrant that exceeds \$200,000 per site. In the case of a coalition, the RLF grant recipient may subgrant to other coalition members. Unlike loans, cleanup subgrants do not require repayment.

- ◆ An RLF award requires a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services, and must be for eligible and allowable costs (the match must equal 20 percent of the amount of funding provided by EPA and cannot include administrative costs, as described in Appendix 2). An RLF grant applicant may request a waiver of the 20 percent cost share requirement based on hardship.
- ◆ The performance period for these grants is five years.

Bill Jarocki of the Environmental Finance Center located at BSU provided an overview of state revolving loan funds and environmental financing methods. Mr. Jarocki discussed for the group the general structure of existing state revolving loan funds. Mr. Jarocki emphasized the challenge (importance) of structuring these programs to allow for adequate flexibility (i.e. 0% interest for 10 years, increasing over remaining 20 year term) while ensuring long term financial viability (i.e., a reasoned balance between grants and loans). Projects must have a long term income stream, and repayments should be timed to match that income stream.

## ***B. Group discussion***

- ◆ Try to develop a link between BCRLF and state insurance; maybe BCRLF funds could be used to capitalize a state insurance tool, or to pay for premiums under such a program.
- ◆ When asked, all 6 EDDs indicate a BCRLF is a needed tool. Work with tax commission to devalue assessed properties to reflect cost to cleanup environmental contamination. EFC's web page provides information on over 700 sources of funding for environmental assessment and cleanup (go to "services and tools" link: <http://sspa.boisestate.edu/efc/>)
- ◆ Need to set up the fund such that it is self-sustaining, yet attractive enough to be used. Need to determine whether funds are available to public entities only, or private too. Consider criteria for loans becoming grants and vice versa.
- ◆ Rick Tremblay, EDA, indicated all 6 EDDs agree a BCRLF is a needed tool. All 6 EDDs support a coalition BCRLF application together with DEQ and IDOC.
- ◆ For private parties to make use of a BCRLF, timing would be of central importance. Application, review and funding must take place very quickly. Also, loan terms must be attractive enough to create interest.

### **C.     *Program Actions***

The Program and the 6 EDDs followed the recommendation of the Working Group and formed the Reuse Idaho Brownfields Coalition, identifying SAGE as the coalition's lead agency. In turn, the RIBC prepared and submitted to EPA a proposal seeking \$3,000,000 in federal funding to capitalize a BCRLF covering the entire state. The proposal incorporates many of the suggestions made at the Working Session. Details of loan and grant terms and conditions have not yet been determined. These determinations will be made over a six month period following an EPA determination to fund the RIBC's proposal. The RIBC will seek input from all sectors in finalizing these terms and conditions. Certain roles and responsibilities are identified in the proposal.

You may contact Keith Donahue at 373-0495 to receive a copy of the RIBC proposal.

#### ***IV. How Can DEQ's Brownfields Program Identify, Coordinate and/or Leverage Government Programs Funding the Assessment and/or Cleanup of Environmental Sites?***

##### ***A. Discussion Summary***

**Moderator:** Rick Tremblay  
U.S. Department of Commerce  
Economic Development Representative

Mr. Tremblay and representatives from each of the EDDs provided information on various funding sources utilized at projects within their jurisdiction. This discussion evidenced the vast array of different (and sometimes overlapping) funding opportunities available throughout the life cycle of a renewal project. EDDs and other local/regional economic development entities help local governments and private (re)developers access available funds.

This session ran shorter than the first two due to time constraints. Group comments focused on the concept that EDDs and local economic entities assist local government in coordinating various funding opportunities for a (potential) project. Rather than attempting to provide this same service, the Program should utilize the existing relationships these entities have with local governments and the (re)development community. The Program should work to ensure these entities understand the various EPA and Program brownfield opportunities, have information related to these opportunities, and have EPA and Program contact information. In addition, the Program will work to understand brownfield funding opportunities available from other state and federal entities.

Following these recommendations, the Program worked closely with the 6 EDDs in forming the Reuse Idaho Brownfields Coalition. The Program shared information with Idaho's Associations of Cities and Counties. The Program placed all Brownfields information on DEQ's web page. The Program placed EPA's "Brownfield Federal Programs Guide" on its web page; this document summarizes all federal programs with potential brownfield funding. The Program is also working to build relationships with federal entities identified in the Programs Guide such as EDA, USDA, ACE. The Program is currently developing a "Brownfield Revitalization" brochure for statewide distribution through economic development entities. Finally, upon request, the Program presents brownfield information to economic development entities around the state.

For all projects utilizing Program funding (or other incentives), the Program will track the project through completion of the renewal process and report information related to various funding sources accessed throughout the project life, whether public or private.